IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17-4-2007

CORAM

THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

C.M.A.No.234 of 2001

1. Tmt.Velu Ammal
2. Minor Petchiammal
3. Minor Nandakumar
4. Minor Mohana
   [Minor Appellants 2 to 4
   are rep. by their mother &
   guardian the first appellant] .. Appellants

vs.

1. Sri Krishna Agencies,
   No.4/905, G.N.T. Road,
   Padiyanallur, Chennai-52.

2. United India Insurance Co.Ltd.,
   Motor Third Party Claim Cell,
   No.38, Anna Salai,
   Chennai-2. .. Respondents

Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act against the order dated 18.5.1999 made in W.C.No.125 of 1997 on the file of the Commissioner for Workmen's Compensation-II, Chennai-6.

For Appellants : Mr.U.M.Ravichandran

For Respondent-2 : Mr.P.D.Audikesavalu

R-1 : No appearance

WEB COPY

JUDGMENT

The applicants in W.C.No.125 of 1997 before the Commissioner of Workmen's Compensation No.II, Chennai-6 are the appellants before this Court.

2. The case put forth by them before the said Authority was that one Anbazhagan, husband of the first appellant and father of the other appellants, died in an accident arising out of and in the course

https://hcservices.ecourts.gov.in/hcservices/

of his employment with the first respondent on 18.8.1993. Their further case before the said Authority was that the deceased Anbazhagan was receiving a sum of Rs.80/- as daily wages and Rs.10/- as daily batta. On 18.8.1993, when he was working as Lorry Driver in the lorry bearing registration No.AP-26-T-4656 owned by the first respondent herein died due to electrocution during the course of employment at the first respondent's shed. The second respondent being the insurer of the said vehicle has been added in the said proceedings. The said proceedings has been initiated by them for payment of compensation for the death of the said Anbazhagan in the said accident arising out of and in the course of his employment.

3. The first respondent filed a counter stating that if any orders are passed for payment of compensation, that amount should be paid by the second respondent-Insurance Company. The second respondent has filed the counter stating that it does not admit the manner of accident and the employment of the deceased with the first respondent herein, as driver. It has also been averred in the said counter that the appellants have to establish that the deceased died in the course of employment as driver under the first respondent.

4. After considering the evidence adduced on the side of the appellants as well as the respondents herein, the Authority referred to above held that the deceased died due to electrocution during the course of his employment with the first respondent herein. Further, the Authority has ordered compensation of a sum of Rs.78,824/- and the said amount has been directed to be deposited by the second respondent herein within one month from date of receipt of the order failing which interest at the rate of 6% shall be recovered from date of filing of the claim application. The applicants/appellants preferred the present appeal only on the ground that the Authority ought to have awarded interest at the rate of 12% from the date of the accident without imposing any condition which will give loop holes to the respondents to evade payment of interest for the amount awarded. In fact, when the appeal was entertained, the following substantial question of law has been framed:-

> "Whether the Commissioner for Workmen's Compensation ought not to have awarded interest at the rate of 12% per annum from the date of accident when the award was passed on merit?

5. The learned counsel appearing for the appellants contended that the Authority while awarding interest should have awarded interest at the rate of 12% from the date of accident and should not have directed the second respondent to deposit a sum of Rs.78,824/- within one month from the date of receipt of the order failing which it has to pay interest at the rate of 6% which will be recovered from the date of filing of the petition. In fact, the learned counsel appearing for the appellants contended that the appellants are entitled to the said award amount with interest at 12% from the date of the accident and the Authority should not have awarded interest only at 6% per annum if the

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

amount awarded is not deposited within one month from the date of receipt of the order. According to the learned counsel, ordering interest at 6% only if the amount is not deposited within one month is totally erroneous. The learned counsel relied on the decision of the Division Bench of this Court reported in 2002 (4) C.T.C. 469 (THE ORIENTAL INSURANCE CO LTD v. KALIYA PILLAI) wherein it has been held as follows:-

> "As stated earlier, the Workmen's Compensation Act, being a beneficial legislation, considering the object and scheme of the Act, particularly after insertion of Section 4-A, we hold that interest for the compensation amount would accrue 30 days after the date of accident and not from the date of quantification. To make it clear that we are of the view that the liability to pay interest would run from the date on which the right to receive compensation accrues in favour of the workman namely the date of the accident and not on the date of issuance of orders by the Commissioner for Workmen's Compensation."

6. The learned counsel further relied on the decision reported in III (2006) A.C.C. 727 (DB) (MARY v. JOSE MATHEW) wherein a Division Bench of the Kerala High Court has held that the rate of interest payable is 12% and not 6%.

7. The learned counsel further relied on an unreported decision of a Division Bench of this Court made in L.P.A.No.224 of 2001 dated 2.4.2004 wherein Their Lordships have held as follows:-

> "We are also of the opinion that the claimants are entitled to get interest from the date of the accident, on which date the right to receive compensation accrues, though the quantum is fixed subsequently. Hence, the judgment of the learned Judge in this regard cannot be sustained and the claimant is entitled to get interest at 12% from 1.6.1998, i.e., from the date of the accident."

8. The learned counsel relied on another unreported decision of a Division Bench of this Court made in C.M.A.No.1055 of 2001 dated 30.10.2002 wherein, Their Lordships have held as follows:-

> "In the light of what is stated above, while upholding the quantum of compensation arrived, we grant interest at the rate of 12% per annum for the said amount, but interest as mentioned above shall be payable after expiry of 30 days from the date of accident till date of payment. To this extent, the Civil Miscellaneous Appeal is allowed."

By citing the above decisions, the learned counsel appearing for the appellants contended the the appellants are entitled to get interest from the date of the accident on which date the right to receive compensation accrues, though the quantum is fixed subsequently.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

9. Per contra, the learned counsel appearing for the second respondent contended that the Authority has rightly held that interest at the rate of 6% is payable if the respondent in the said proceedings did not deposit the amount awarded within one month from the date of the order. The learned counsel relied on the decision reported in 2007 SCCL.COM 102 (NATIONAL INSURANCE CO. LTD v. MUBASIR AHMED) wherein the Apex Court has held as follows:-

> "Interest is payable under Section 4-A(3) if there is default in paying the compensation due under this Act within one month from the date it fell due. The question of liability under Section 4-A was dealt with by this Court in MAGHAR SINGH v. JASHWANT SINGH (1998 (9) S.C.C. 134). By Amending Act, 14 of 1995, Section 4-A of the Act was amended, inter alia, fixing the minimum rate of interest to be simple interest @ 12%. In the instant case, the accident took place after the amendment and, therefore, the rate of 12% as fixed by the High Court cannot be faulted. But the period as fixed by it is wrong. The starting point is on completion of one month from the date on which it fell due. Obviously it cannot be the date of accident. Since no indication is there as when it becomes due, it has to be taken to be the date of adjudication of the claim. This appears to be so because Section 4-A(1) prescribes the compensation under Section 4 shall be paid as soon as it falls due. The compensation becomes due on the basis of adjudication of the claim made. The adjudication under Section 4 in some cases involves the assessment of loss of earning capacity by a qualified medical practitioner. Unless adjudication is done, question of compensation becoming due does not arise. The position becomes clearer on a reading of sub-section (2) of Section 4-A. It provides that provisional payment to the extent of admitted liability has to be made when employer does not accept the liability for compensation to the extent claimed. The crucial expression is "falls due". Significantly, legislature has not used the expression "from the date of accident". Unless there is an adjudication, the question of an amount falling due does not arise."

Thus, according to the learned counsel appearing for the second respondent, the payment of interest will arise only if the amount awarded has not been deposited within one month from the date of the award by the Authority referred to above.

10. I have heard Mr.U.M.Ravichandran, the learned counsel appearing for the appellants and Mr.P.D.Audikesavalu, the learned counsel appearing for the second respondent.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

11. The question that has to be answered in this appeal is whether the appellants are entitled to compensation from the date of accident with interest at the rate 12% per annum or whether the compensation awarded by the authority directing the second respondent-Insurance company to pay the award amount within one month from the date of receipt of the order and failure to do so will attract interest at 6% per annum from the date of filing of the claim application is to be sustained. The learned counsel appearing for the appellants relying on the decisions referred to above contended that the claimants will be entitled to get interest from the date of the accident on which date the right to get compensation has accrued, though the quantum has been fixed later. But, on the other hand, the learned counsel appearing for the second respondent contended that interest is payable only if there is a default in payment of compensation within one month from the date it fell due.

12. Section 4-A(1) of the Act reads as follows:-

> "Compensation under Section 4 shall be paid as soon as it falls due."

Thus, the said provision makes it very clear that compensation becomes due on the basis of the adjudication of the claim made. Unless adjudication is done, the question of compensation becoming due does not arise. If the intention of the legislature is that the compensation is to be payable from the date of the accident, Section 4-A(1) would say from the date of the accident. But, Section 4-A(1) says compensation shall be paid as soon as it "falls due". Thus, the said expression "falls due" will clearly show that the compensation becomes due on the basis of the adjudication of the claim made. Adjudication depends upon assessment of loss of earning capacity to be proved through the evidence of the Medical practitioner. Till it is quantified, the question of compensation becoming due does not arise at all. Such a view has been taken by the Honourable Apex Court in the judgment reported in 2007 SCCL.COM 102 (NATIONAL INSURANCE CO. LTD v. MUBASIR AHMED). Even though the Bench of this Court has taken the view that the claimants will be entitled to interest from the date of the accident, since according to the Bench of this Court, the right to receive compensation accrues from the date on which the accident took place, the Apex court has clearly held that the compensation under Section 4-A shall arise on the date of adjudication of the claim and not on the date of accident. In view of the said settled position held by the highest Court of the land, I am constrained to hold that payment of compensation will become due on the date of adjudication of the claim and not on the date of the accident. Thus, the Court below has awarded a sum of 78,824/- and directed the second respondent to deposit the said sum within one month from the date of receipt of the order failing which interest at the rate of 6% will be recovered from the date of claim application. The said order does not suffer from any illegality or infirmity.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

13. In the result, the award of the learned Commissioner for Workmen's Compensation No.II, Chennai-6 made in W.c.No.125 of 1997 dated 18.5.1999 is liable to be confirmed and accordingly, the same is confirmed. The Civil Miscellaneous Appeal stands dismissed. However, there is no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpp

To

1. The Commissioner for Workmen's Compensation-II,
Chennai-6.

2. The Section Officer, V.R.Section, High Court, Madras.

1 cc To Mr.A.Shanmugaraj, Advocate, SR.25389.
1 cc To M/S.P.A.Devasigamani Associates, Advocate, SR.25080.

C.M.A.No.234 of 2001

VC(CO)
RVL 25.04.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/